

**Professionalism Guidelines and Sanctions for Use by Judges**

**I. Overview of the Subcommittee's Work.**

The premise of this Subcommittee's mission is a perception that:

Incivility in open court infects the process of justice in many ways. It compromises the necessary public trust that the system will produce fair and just results; it negates the perception of professionalism in the legal community, and it erodes respect for all people involved in the process.

*In re Hillis*, 858 A.2d 317, 324 (Del. 2004) (citing Ty Tasker, *Sticks and Stones: Judicial Handling of Invective in Advocacy*, Judges' J., Fall 2003, 17 at 19-20), *reargued and aff'd*, 858 A.2d 325 (Del. 2004).

"[T]o be aggressive is not a license to ignore the rules of evidence and decorum; and to be zealous is not to be uncivil." *In re Hillis*, 858 A.2d at 324 (quoting *In re Williams*, 414 N.W.2d 394, 397 (Minn. 1987)). When does zealous advocacy become unacceptable? Is there an objective standard so abusive litigation tactics and egregious incivility by attorneys can be judicially remedied without violating freedom of speech and the sacred duty to advocate a client's lawful objectives?

This report touches upon the inherent problems of enforcing civility. The Subcommittee investigated whether civility codes for attorneys have been instituted elsewhere. Our study reviewed statistics of the Attorney Grievance Commission and compared them to reputable opinion polls about public respect for the legal profession. We looked at whether civility could be enforced by the court's use of its inherent powers in a constitutional manner. We conducted research to see what procedures may pass constitutional muster. We reviewed conventional suspension methods used by schools and discussed whether those generally accepted procedures could be applied to the legal profession. We considered proceedings where attorney incivility has been disciplined as unethical conduct, and reviewed the Maryland Rules of Professional Conduct to see if more rigorous definitions for professionalism could be incorporated.

We also studied the federal system, particularly the U.S. District Court for the District of Maryland, which has incorporated standards of appropriate conduct into its court rules. We examined the Maryland federal district court's policy for addressing attorney misconduct, and

considered it as a possible basis for a state system. On a broader scope, federal case law was analyzed to understand which mechanisms used elsewhere had the most success and were affirmed on appeal.

The Subcommittee's work remains incomplete until the Commission as a whole decides whether the Maryland Bar needs a mandatory civility code. Until the issue of a mandatory *versus* an aspirational civility code is decided, it is premature for the Subcommittee to define concrete standards of civility for judges to enforce. Such rules would offer substance and guidance to both judges and attorneys.

It is the consensus view of the Subcommittee that the Maryland Bar can reclaim the high standard of legal professionalism, but only with clear guidelines and enforceable consequences when those limits are violated.

## **II. Incivility in the Legal Profession: 1929-present.**

Members of the Maryland Bar are held to a higher standard than the laity:

Upon admission to the Bar, an attorney accepts and agrees to be bound by the rules of conduct significantly more demanding than the requirements of law applicable to other members of society. As the Preamble to the Rules of Professional Conduct states: A lawyer is a representative of clients, an officer of the legal system *and a public citizen having special responsibility for the quality of justice.*

*Attorney Grievance Comm'n v. Alison*, 317 Md. 523, 535, 565 A.2d 660, 665-66 (1989) (Emphasis added).

The vast majority of Maryland's 31,934 attorneys seem able to adhere to that standard. *29<sup>th</sup> Annual Report*, Attorney Grievance Comm'n of Md. at 33 (2004). The Commission reported 1,610 complaints were filed against Maryland lawyers in fiscal year 2004. *Id.* at 16. Of 1,610 complaints, Bar Counsel docketed 485 of them for further investigation of one or more possible violations of the Maryland Rules of Professional Conduct. *Id.* at 33. Thirteen (2%) of the 485 docketed complaints involved "conduct prejudicial to the administration of justice." *Id.* at 19.

In comparison, ten years ago the Attorney Grievance Commission received 1,594 complaints about attorneys, even though there were then 23,224 (8,710 fewer) Maryland lawyers. *Id.* Interpreting the data, the rate of complaints to bar population has gone from 6.8% in FY 1994 to 5.0% in FY 2004 – a decrease of 1.8% over the last decade.

A survey for the American Bar Association demonstrates reason for concern. The A.B.A. survey showed only 30% had faith in U.S. justice. *Confidence in Institutions/Professions, Perceptions of the U.S. Justice System*, American Bar Ass'n at 32 (1999) (Online at [www.abanet.org/media/perception/perception32](http://www.abanet.org/media/perception/perception32)). Just 32% placed judges on the high confidence level. *Id.* Equally sobering was how the public perceived attorneys: 42% rated lawyers at the lowest confidence level, and only 14% had a high level of confidence in attorneys. *Id.* The press was the only group to rank lower in the survey. *Id.*

A Gallup Poll measured public opinion about the legal profession in November 2004. (Online at [www.pollingreport.com/values](http://www.pollingreport.com/values)). Respondents were asked, "Please tell me how you would rate the honesty and ethical standards of people in these different fields..." Judges ranked in the middle at 53%, but lower than police, nurses, schoolteachers, pharmacists, military officers, physicians and clergy. *Id.* Members of Congress had a 20% approval rating. *Id.* Lawyers ranked at 18%; only advertising executives and car salesmen were lower. *Id.*

The number of complaints received by the Attorney Grievance Commission has changed little in ten years, yet the profession's image has dropped in the polls. Reasons for the trend might include: (a) incidents going unreported to the Attorney Grievance Commission, (b) national polls driven by notorious trials where the jury and the public reach different conclusions, and (c) national polls reflect displeasure with flamboyant tactics of a few celebrity attorneys. A countervailing interpretation is that subjective polling results are negated by objective caseload data of the Attorney Grievance Commission showing a percentage decrease in the complaints against Maryland attorneys during 1994-2004.

Is incivility among the Maryland Bar actually a growing problem, or is it a case of "perception is reality"? In June 1929, "Upholding the Standards of the Legal Profession" was the topic of the Maryland State Bar Association annual meeting in Atlantic City, New Jersey. Three speakers, including one named Edgar Allan Poe, lamented the decline of professional courtesy; the causes of which were blamed on:

- "(1) Size and personnel of the Bar.
- "(2) Treating the law as a business and not as a profession.
- "(3) The mad chase for the dollar.
- "(4) The breaking down and lowering of moral standards generally, that have taken place in recent years.

*Report of the Thirty-Fourth Annual Meeting of the Maryland State Bar Association, Maryland State Bar Ass'n, 100, 119 (1929).*

The problem confronting the Professionalism Commission in 2005 was not new in 1929. The A.B.A. and Gallup polls show that most people polled do not consider attorneys as very honest, ethical or worthy of a high degree of confidence. But both surveys show that more than half of the public still holds judges in much greater esteem. Judges are therefore better positioned than attorneys to lead the legal profession out of the present professionalism predicament.

### **III. The Advent of Civility Codes.**

What is the difference between ethics and professionalism? Ethics is a set of rules that lawyers *must* obey. Violations of these rules can result in disciplinary action or disbarment. Professionalism, however, is not what a lawyer *must* do or *must not* do. It is a higher calling of what a lawyer *should* do to serve the client and the public.

Chief Justice E. Norman Veasey, "Making It Right-Veasey Plans Action to Reform Lawyer Conduct," *Bus. L. Today*, Mar.-Apr. 1998, 42, 44. (Emphasis added) (Chief Justice Veasey, now retired from the Supreme Court of Delaware, chaired the A.B.A. Ethics 2000 Commission.).

The Subcommittee believes the decline of professionalism in the practice of law is most noticeable in litigation. Most of the decline is attributable to "hardball" litigators who fail to assert their independent judgment and allow themselves to be mere conduits for "win at all costs" clients. Some of the most egregious behavior is committed in the name of client advocacy. Most seasoned attorneys know not to subordinate ethics and professionalism to a client's contrary needs. Though zealous advocacy for one's client is important to the adversarial process, conduct that is demeaning, harassing or untruthful is *overzealous*, rarely serves an ethical purpose, and is particularly unhelpful to the afterlife of cases where the parties would normally have contact afterward.

In response to the growing deterioration of civility and respect in the legal profession, almost every jurisdiction in the United States is reviewing its judicial codes, professional conduct rules or court rules, and in many instances implementing aspirational civility codes. (See Appendix 1). An October 2004 report of States reviewing professional conduct rules, indicates that eleven have officially amended the rules: Arizona, Delaware, Idaho, Indiana, Louisiana, Montana, New Jersey, North Carolina, Pennsylvania, South Dakota and Virginia. The states that

have issued reports are Arkansas, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oregon, South Carolina and Washington. Those States which are currently in the process of reviewing their rules are: Alabama, Alaska, California, District of Columbia, Hawaii, Kentucky, Maine, Massachusetts, New Mexico, North Dakota, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.

All jurisdictions in the U.S. that have addressed attorney incivility have done so with aspirational rules. Almost all have a disclaimer negating use for enforcement, *e.g.*, Delaware's "Principles of Professionalism for Delaware Lawyers" states:

They are not intended, nor should they be construed, as establishing any minimum standards of professional care or competence, or as altering a lawyer's responsibilities under the Delaware Lawyers' Rules of Professional Conduct. These Principles shall not be used as a basis for litigation, lawyer discipline or sanctions. The purpose of adopting the Principles is to promote and foster the ideals of professional courtesy, conduct and cooperation. These Principles are fundamental to the functioning of our system of justice and public confidence in that system.

Preamble, *Principles of Professionalism for Delaware Lawyers*, Del. State Bar Ass'n and Del. Sup. Ct. (2003) (Online at <http://courts.state.de.us/rules/?prinproflawyers.pdf>). The Principles are reproduced and attached hereto at Appendix 2.

The Subcommittee is unaware of any jurisdiction in the U.S. with a mandatory civility code. But an aspirational civility code is not necessarily toothless. *Aspen Servs., Inc. v. IT Corp.*, 220 Wis. 2d 491, 497, 583 N.W.2d 849, 852 (Wis. Ct. App. 1998) ("Aspen is correct in its assertion that the new rules of civility, SCR 62 'Standards of Courtesy and Decorum for the Courts of Wisconsin,' are not enforceable by the Board of Attorneys Professional Responsibility. [Citation omitted] However, it is mistaken in its belief that the rules in SCR 62 . . . cannot be the basis for imposing a sanction for incivility during litigation. The trial courts and the appellate court of this state do have statutory and inherent authority to enforce civility in the courtroom that is not dependent upon . . . SCR 62.")

#### **IV. Playing by the Rules – Examples of Cases Involving Incivility.**

In *Aspen, supra*, both sides were required to split costs of a referee appointed to control overly contentious discovery in a breach of equipment lease case, and the prevailing party's

request for counsel fees pursuant to the lease agreement was granted but reduced as a sanction for repeated, flagrant incivility. 220 Wis. 2d at 512, 583 N.W.2d at 857. In the case cited earlier of *In re Hillis*, 858 A.2d 317, *reargued and aff'd*, 858 A.2d 325 (Del. 2004), the Supreme Court of Delaware upheld a fine of \$267 against an attorney whose unjustified tardiness resulted in wasted transport of three prisoners to and from court at the rate of \$89 per defendant.

Dozens of Maryland Court of Appeals cases apply Rule 8.4(d) of the Rules of Professional Conduct to attorneys being held accountable for misbehavior. (See Appendix 3). Examples of cases in other jurisdictions include: *Office of Disciplinary Counsel v. Levin*, 35 Ohio St. 3d 4, 517 N.E.2d 892 (Ohio 1988) (Attorney's abusive deposition behavior violated DR 1-102(A)(5) and warranted indefinite suspension), *reinstatement granted*, 69 Ohio St. 3d 1222, 635 N.E.2d 380 (1994); *People v. Genchi*, 824 P.2d 815, 816 (Colo. 1992) (Counsel's "abusive, insulting and unprofessional behavior" during deposition of his own expert violated Rule 8.4(d), DR 1-102(A)(5) and warranted six-month suspension); *In re Illuzzi*, 160 Vt. 474, 480, 632 A.2d 346 (Vt. 1993) (Six-month suspension for attorney who violated DR 1-102(A)(7) by twice suggesting to opposing party that his attorney was "running the meter"); *People v. Holmes*, 921 P.2d 44, 47 (Colo. 1996) (Counsel's letters to *pro se* opponent containing "undignified, offensive and threatening" material violated Rule 8.4(h) and merited one-year suspension); *In re Black*, 265 Kan. 825, 941 P.2d 1380 (Kan. 1997) (Counsel's verbal abuse of opposing party during juvenile administrative hearing violated Rule 8.4(d) and warranted indefinite suspension); *In re Scimecca*, 265 Kan. 742, 962 P.2d 1080 (Kan. 1998) (Counsel's verbal abuse and physical threats to judge during chambers conference violated Rule 8.4(d) and warranted indefinite suspension).

In *Attorney Grievance Comm'n v. Alison*, 317 Md. 523, 565 A.2d 660 (1989), the Court of Appeals of Maryland sanctioned an attorney for violation of Rule 8.4(d) for verbally abusing court clerks and using profanity in the courtroom. The Court also upheld a Rule 4.4 violation due to the attorney's service of a subpoena upon a news reporter merely to sequester and thereby prevent the reporter from covering the trial of criminal charges against the attorney for assault of a police officer, resisting arrest, and hindering police. As a sanction, the Court of Appeals suspended Mr. Alison from the practice of law for ninety days.

Citing *Alison*, *supra*, Bar Counsel sought a 30-day suspension of a different attorney for offensive and disrespectful language. The Court of Appeals found the attorney's conduct "rude, boorish, insensitive, oppressive and certainly insulting, but it was not even arguably criminal

[, n]or was the respondent engaged in a purely personal pursuit.” *Attorney Grievance Comm’n v. Link*, 380 Md. 405, 428, 844 A.2d 1197, 1211 (2004) (Emphasis added). Notwithstanding the implication of the italicized quote that Mr. Link’s incivility was related to a professional matter, the Court of Appeals found no rule violation and dismissed Bar Counsel’s petition. *Id.* Writing for the Court, Chief Judge Robert Bell stated, “Only when such purely private conduct is criminal or so egregious as to make the harm, or potential harm, flowing from it patent will that conduct be considered as prejudicing, or being prejudicial to, the administration of justice.” *Id.* at 429, 844 A.2d at 1211-12.

Footnote 13 of the *Link* opinion applies to this Commission: “[The Professionalism Commission] is not intended to, and will not, be a vehicle for the micro-management of all aspects of the legal profession, including purely private activities and conduct.” *Id.* at 429, 844 A.2d at 1211 (Emphasis added).

## **V. Federal System as a Model for Attorney Discipline.**

Federal courts face the same problem of incivility as state courts, and struggle with the enforceability of aspirational civility codes. Federal judges seem less reticent to sanction out-of-bounds behavior of the attorneys appearing before them.

The U.S. District Court for the Eastern District of Washington adopted a “civility code” in its Local Rule 83.1(k) requiring lawyers to “... act with dignity, integrity and courtesy,” and “that civility and courtesy are not to be equated with weakness.” E.D. Wash. LR 83.1(k) pmbl. (1)(c), (2)(a).

In *Dondi Props. Corp. v. Commerce Sav. & Loan Ass’n.*, 121 F.R.D. 284, 287-88 (N.D. Tex. 1988), the U.S. District Court for the Northern District of Texas, sitting *en banc*, in response to abusive litigation tactics, established eleven standards of conduct for civil litigation:

- (A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
- (B) A lawyer owes, to the judiciary, candor, diligence and utmost respect.
- (C) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
- (D) A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

(E) Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(F) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(G) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

(H) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.

(I) Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.

(J) If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.

(K) Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

121 F.R.D. at 227-28.

The *Dondi* court observed that “[a]ttorneys who abide faithfully by the standard we adopt should have little difficulty conducting themselves as members of a learned profession whose unswerving duty is to the public they serve and to the system of justice in which they practice.” *Id.* at 288. Conversely, “[m]alfeasant counsel can expect . . . ‘a warm friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances.’” *Id.* (quoting *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 878 (5th Cir. 1988)) (Emphasis added).

## VI. “Felling Trees in the Ethically Empty Forest”?

It is reasonable to anticipate that the public expects judges to insist attorneys observe high professional standards. As attorney misconduct affects the integrity of the judicial process, it is logical that judges should assert the initiative to address, report or correct such misconduct.

Maryland’s Code of Judicial Conduct, Canon 3(B)(3) already establishes a judge’s duty: “A judge should take or initiate appropriate corrective measures against a judge or lawyer for unprofessional conduct of which the judge may be aware.” Md. Rule 16-813 (2004). The

Comment to Canon 3 states, “Corrective measures may include a private admonition or reporting misconduct to the appropriate disciplinary body or a bar association counseling program.” *Id.*

The implication of Canon 3 is a court has discretion to fashion a reasonable sanction designed to remedy a particular attorney’s misconduct. The Canon also implies authority for informal action, such as a letter of reprimand, or a chambers meeting on or off the record.

Appeals from sanctions and direct contempt proceedings can take many months. Judges know this. During the appeal process, the allegedly errant attorney continues to practice. This can frustrate a judge’s ability to be vigilant about reporting misconduct. Informal discussions with Maryland circuit court and district court judges show frustration with the present method for admonishing egregious conduct by litigators. It is too cumbersome, too bureaucratic, and takes too long. The delay between the misbehavior and the exhaustion of the sanction process does little or nothing to restore civility to the pending litigation affected by the misbehavior; the case is usually long over by then. In reversing a jury’s defense verdict where corporate counsel argued in closing that the plaintiff’s attorney conspired with an expert to defraud the jury, a Florida appellate judge’s frustration with that state’s grievance process resonates:

While, in light of [the lawyer’s] egregious conduct, we feel duty bound . . . to report him to the Florida Bar, we have no illusions that this will have any practical effect. Our skepticism is caused by the fact that, of the many occasions in which members of this court—reluctantly and usually only after agonizing over what we thought was the seriousness of doing so—have found it appropriate to make such a referral about a lawyer’s conduct in litigation [citations omitted], none has resulted in the public imposition of any discipline—not even a reprimand—whatever. [citation omitted] In fact, the reported decisions do not reflect that the Bar has responded concretely at all to the tide of uncivil and unprofessional conduct which has been the subject of so much article-writing, sermon-giving, seminar-holding and general hand-wringing for at least the past twenty years . . . Speaking for himself alone, the present writer has grown tired of felling trees in the ethically empty forest which seems so much a part of the professional landscape in this area. Perhaps the time has come to apply instead the rule of conservation of judicial resources which teaches that a court should not require a useless act, even of itself.

*Johnnides v. Amoco Oil Co.*, 778 So. 2d 443, 444 n. 2 (Fla. Dist. Ct. App. 2001) (“Extensive citation of authority is unnecessary to demonstrate that baseless attacks . . . upon the integrity of counsel, or any other player in the case, are both contemptible and condemnable.”).

The following are examples of misbehavior by Maryland attorneys deserving correction but usually falling below the radar of either contempt proceedings, or formal proceedings by the

Attorney Grievance Commission: abusive deposition behavior; overtly disrespectful conduct in court toward a judge or court personnel acting in good faith within the scope of employment; misrepresentations of fact to the court or court personnel; pleadings litigated without good faith; breach of confidentiality terms imposed by the Maryland Rules, by a settlement agreement or by a “gag order;” not promptly entering an appearance after being retained; jury demands and postponement requests motivated by double-booking; and violations of protective orders, scheduling orders, and orders compelling discovery.

The Subcommittee recommends that the Court of Appeals Standing Committee on Rules of Practice and Procedure be duly requested to promulgate a rule creating Behavior Review Panels. The Subcommittee’s proposed rule on Behavior Review Panels is at pp. 13-15 of this report. If a court becomes aware of attorney misconduct in litigation pending before it, then the Behavior Review Panel offers the court a speedy alternative to either contempt proceedings or the Attorney Grievance Commission process. The structure of the Behavior Review Panel resembles a Sentence Review Panel. It also draws from Administrative Federal Local Rule 705, and from the Education Article provisions dealing with student suspensions.

Behavior Review Panels may take remedial action whenever a preponderance of evidence shows that the alleged conduct was prejudicial to the administration of justice. In *Attorney Grievance Comm’n v. Alison*, 317 Md. at 536, 565 A.2d at 666, the Court of Appeals broadly defined conduct prejudicial to the administration of justice:

[C]onduct of this kind [*i.e.*, cursing in court] is prejudicial to the administration of justice. That such conduct does not at the moment of its occurrence delay the proceedings or cause a miscarriage of justice in the matter being tried is not the test. Conduct of this type breeds disrespect for the courts and for the legal profession. Dignity, decorum, and respect are essential ingredients in the proper conduct of a courtroom, and therefore in the proper administration of justice. [citations omitted] Attorneys who cannot maintain that level of professional performance must be disciplined, or if necessary, removed from the profession.

*But, Attorney Grievance Comm’n v. Link*, 380 Md. at 431-32, 844 A.2d at 121 (Raker and Eldridge, JJ., concurring):

The phrase ‘prejudicial to the administration of justice’ is not defined in the Rules of Professional Conduct, nor do the rules or our case law give guidance for application to specific circumstances. The standard embraced by the majority is ambiguous and elusive. It smacks of ‘I can’t define it but I know it when I see it.’ Simply because some conduct is so obviously violative of the Rule and ‘prejudicial to the administration of justice’ does not, in my view, save the Rule. It is unfair to lawyers in the State to be subject simply to

the moral barometer of four judges of this Court. Due process requires more – a lawyer is entitled to have fair notice of conduct which would subject him or her to discipline under the Rules of Professional Conduct. The standard adopted by the Court today fails to give fair notice.

Guidelines for sanctioning attorneys have existed since 1979. *Standards for Lawyer Discipline and Disability Proceedings*, American Bar Association (1979). In an effort to develop clearly defined, appropriate sanctions for attorney misconduct, the Standards have been supplemented. *ABA Standards for Imposing Lawyer Sanctions*, American Bar Association (1986, *am.* 1992) (Online at [www.abanet.org/cpr/regulation/standards\\_sanctions](http://www.abanet.org/cpr/regulation/standards_sanctions)).

Under present Maryland case-law, misbehavior by counsel during representation of a client is *not* prejudicial to the administration of justice if it: (a) did not occur in the courthouse, or (b) did not involve court personnel, or (c) did not involve a confrontation with the parties or their attorneys, or (d) was not directed at the parties and their attorneys. *Attorney Grievance Comm'n v. Link*, 380 Md. at 429, 844 A.2d at 1211-12 (“Only when such purely private conduct is criminal or so egregious as to make the harm, or potential harm, flowing from it patent will that conduct be considered as prejudicing, or being prejudicial to, the administration of justice.”).

Upon proof by a preponderance of evidence of conduct prejudicial to the administration of justice, the Behavior Review Panel could impose an appropriate remedy up to and including a suspension from practice before any judge of the particular court where the offending conduct occurred. The period of suspension would not exceed 30 days, or whatever other period passes constitutional muster.

Using the state District Court as an example, a duly convened Behavior Review Panel, upon proper proof, could suspend an attorney for up to 30 days from appearing before any judge of the district court in that county, or impose any appropriate lesser sanction.

A Behavior Review Panel remedial order would have the ancillary effect of requiring counsel covered by malpractice insurance to notify the clients and the malpractice carrier of the suspension. It is felt that the impact upon the malpractice insurance renewal premium might also encourage behavior modification by errant attorneys and deter others from similar acts.

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Respectfully submitted,  
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Subcommittee Chair

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